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No. 321

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1960

LOCAL 761, INTERNATIONAL UNION OF ELECTRICAL, RADIO AND MACHINE WORKERS, AFL-CIO, *Petitioner*

v.

NATIONAL LABOR RELATIONS BOARD

and

GENERAL ELECTRIC COMPANY

On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

## BRIEF FOR RESPONDENT GENERAL ELECTRIC COMPANY IN OPPOSITION

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### OPINIONS BELOW

The opinion of the Court of Appeals (Pet. 19-25) is reported at 278 F. 2d 282. The decision and order of the National Labor Relations Board (J.A. 37-46)[1] are reported at 123 NLRB 1547.

[1] References are to the portion of the record printed as a Joint Appendix to the briefs in the court below. References preceding a semicolon are to the Board's findings; succeeding references are to the supporting evidence.

## JURISDICTION

The decree of the court below was entered on May 18, 1960 (Pet. 27-28). The petition for a writ of certiorari was filed August 12, 1960. The jurisdiction of this Court is invoked under 28 U.S.C. 1254 and Section 10(e) and (f) of the National Labor Relations Act, as amended (61 Stat. 136, 29 U.S.C. 160 (e) and (f)).

## STANDING OF GENERAL ELECTRIC COMPANY

The Complaint upon which the decision and order of the National Labor Relations Board (J.A. 37-46) were based was issued pursuant to a charge filed by General Electric Company under Section 10(b) of the National Labor Relations Act, as amended. The Company, which participated as charging party in the formal proceedings before the Board, moved for leave to intervene in the Court of Appeals. Its motion was granted by the Court in a per curiam order dated October 8, 1959.

## STATEMENT OF THE CASE

In its brief in opposition the Board has adequately stated the "Question Presented" and correctly summarized the Board's findings, conclusions and order.

One incident referred to only briefly in the Board's "Statement" clearly establishes that the "object" of Petitioner's picket line at Gate 3-A was proscribed by Section 8(b)(4)(A) of the Act by demonstrating that Petitioner deliberately intended that the placing of pickets at this entrance would induce employees of the neutral contractors to refuse in concert to continue working at the Company's property.

The manager of Service Erection & Machine Company, one of the neutral contractors whose crew had

not crossed the picket line, being disturbed by the possibility of contract cancellation, arranged with the business agent of the union to which his employees belonged for a conference with the striking union (J.A. 92). The contractor sought permission for his men to enter the grounds. He was told (J.A. 92-95) by the recording secretary of the striking union that the contractor should "appreciate that we have a picket line up over there" (J.A. 92). On the following day the contractor, accompanied by the business agent for his employees' union, and the Commissioner of Industrial relations for the State of Kentucky, approached the striking union to discuss the admittance of contractor employees. They were told by Petitioner's vice president on this occasion that he had no authority to extend such workers privileges to enter the grounds, that he would take it up wih his executive board (J.A. 93-94), and get in touch with the contractor's union representative. Nothing resulted from this conference and the contractor's working force did not return until after the pickets were removed (J.A. 94).

## ARGUMENT

The Respondent agrees with the Board in representing to this Court that the decision below is correct, does not conflict with that of any other court of appeals, and no issue of such importance as to justify review by this Court is presented. It is also significant that in the 1959 amendments to the Act, the construction of which is not in issue here, Congress impliedly ratified the limitations on situs picketing illustrated by the Board order in this case.

The real test of whether a picket line at the premises of a primary employer is lawful or whether it is pro-

hibited by Section 8(b)(4)(A) turns not on the matter of situs but upon the object of the picketing. Thus no exception to the approach of the court below to the central issue can be taken (Pet. 23):

> "Here the question may be stated: was it an object of the strike to induce or encourage the employees of the several contractors—not of the primary employer—to engage in concerted refusal in the course of their employment to perform their own work or to render services so that their employers would cease doing business with General Electric?"

Inasmuch as Gate 3-A was the entrance regularly used by the employees of neutrals and not used at all by employees of the primary employer, it can scarcely be argued that the efforts of the Union in this case were not directed at bringing about a concerted work stoppage with respect to the neutral contractors, an objective prohibited by 8(b)(4)(A).

1. But the Union, apparently conceding that the picketing was aimed at employees of secondary employers, nonetheless contends that its conduct at Gate 3-A "cannot be distinguished in any material respect from the inducement of the employees of neutral employers in the *Rice Milling*[2] case" (Pet. 8) and is thereby protected activity. In *Rice Milling*, however, where the Court's review was confined to the single incident of the inducement of a truck driver and his helper not to pick up an order at the picketed plant this Court limited its holding to the following:

> "A sufficient answer to this claimed violation of the section is that the Union's picketing and its

[2] *N.L.R.B. v. International Rice Milling Co.*, 341 U.S. 665.

> encouragement of the men on the truck did not amount to such an inducement or encouragement to "concerted" activity as the section proscribes."

Such holding, we submit, is totally inapplicable to a situation where, as here, there is a readily discernible pattern of conduct aimed at all employees of a group of neutral contractors.

Equally unjustifiable is the Union's contention that this Court in *Rice Milling* gave implicit recognition to the legitimacy of all picketing at primary sites. Quite to the contrary, we suggest that this Court's decision disavowed the notion that the presence of a primary situs immunized picketing which, had it occurred elsewhere, would be violative of 8(b)(4)(A). The Board, in its opinion in *International Rice Milling Co.*, 84 NLRB 360, 361, dismissed the original complaint on the ground that

> "The Respondent's activities arose out of the *primary* picketing of the Kaplan Mill and were carried out in the immediate vicinity of this mill." (Original emphasis.)

Likewise the only issue before the Court of Appeals for the Fifth Circuit[3] was whether the Board was correct in holding that because "only primary picketing" was involved, Section 8(b)(4)(A) had not been violated. The Court rejected this contention, saying:

> "To allow the Board to rule such activity as prohibited by the statute not to be a violation thereof, simply because it occurred in the vicinity of the struck employer's plant, would render the section ineffective and insufficient."

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[3] *International Rice Milling Co.* v. *N.L.R.B.*, 183 F. 2d 21, 26.

Although the holdings of the Board and the Court of Appeals rested precisely on the significance of picketing at a primary situs, this Court chose to base its own decision on grounds not referred to by either forum. By holding that the inducements were not aimed at *concerted* activity, this Court studiously avoided adopting the position pressed upon it by the Board and here taken by the Petitioner. In short, the Petitioner's concept of legitimate primary activity has simply not been accepted by this Court in the *Rice Milling* case or any other decision.

2. In similar vein, the instant case is readily distinguishable from *Local 618, Automotive Employees Union* v. *N.L.R.B.*, 249 F. 2d 332 (CA 8), relied upon by Petitioner to establish a conflict of decision between the Courts of Appeals of the Eighth Circuit and the District of Columbia.

Indeed, the Court below specifically distinguished a parallel decision in its own circuit from the instant case while Petitioner has cited it as controlling precedent. That decision was *Seafarers International Union* v. *N.L.R.B.*, 265 F. 2d 585 (CADC). In *Seafarers* and in *Local 618*, the unions engaged in a primary strike, placing picket lines near the place of employment of the strikers—in the first case, a ship tied to a dock in a repair yard; in the second, a filling station. After the pickets had appeared, the primary employers in both instances instructed their own employees not to report to work. The picketing continued, however, resulting in certain repair and construction jobs at both places being interrupted. In each case the reviewing courts declined to enforce a Board order because of absence of evidence that an object of

picketing at the particular place was to induce the employees of neutrals to stop work—it being conceded that the original establishment of the picket line in each instance was a legitimate incident of the primary strike.

In its opinion in this case, the Court below (Pet. 23-24) points out how different the object of the picketing in the instant case was from that in *Seafarers*. Such observation could have been made with equal force with respect to the facts in the *Local 618* case, had the instant case arisen in the Eighth Circuit. In both cases the courts in holding that the Board's finding concerning the objective of the pickets was lacking in evidentiary support, stressed the inability of the striking unions to find any other place to picket, either for the purpose of maintaining the primary strikes or to publicize the disputes to the general public.

It is obvious in the instant case, however, that the availability of the other four gates at General Electric to Union pickets afforded Petitioner all the opportunity it needed to appeal to the employees of the struck employer and to proclaim the existence of its strike to the general public. Consequently, the decision of the Eighth Circuit in *Local 618* is no more in conflict with the decision of the Court below than the latter Court's own earlier opinion in *Seafarers*. Plainly, neither case is in point here.

3. We do not understand the Union's petition to contend that the 1959 amendments to the Act grant greater immunity to union conduct with respect to 8(b)(4) activity than was previously the case. Indeed such amendments were probably intended to be more stringent in curbing union activity. That is not a question

which this Court is called upon to decide however, for Section 707 of the Landrum-Griffin Act specifically provides that none of its provisions create an unfair labor practice retroactively.

This case arose prior to the 1959 amendments and was decided by the Board on June 8, 1959—several months before the new legislation went into effect. It is interesting to note, however, that the legislative history of the proviso respecting primary strikes and primary picketing (Pet. 12-13), far from lending support to Petitioner's thesis, indicates Congressional approval of such Board and court decisions (including this one) as had established the line of demarcation between permissible and prohibited picketing at the situs of a dispute. The Statement of the House Conference Managers explains the intent of this proviso as follows:

> "The purpose of this provision is to make it clear that the changes in section 8(b)(4) do not overrule or qualify the present rules of law permitting picketing at the site of a primary labor dispute. This provision does not *eliminate, restrict, or modify the limitations on picketing at the site of a primary labor dispute that are in existing law.* (Emphasis supplied.) See, for example, *N.L.R.B. v. Denver Building and Construction Trades Council, et al.* (341 U.S. 675 (1951)); *Brotherhood of Painters, Decorators, and Paper Hangers, etc.*, and *Pittsburgh Plate Glass Co.* (110 NLRB 455 (1954)); *Moore Drydock Co.* (81 NLRB 1108); *Washington Coca Cola Bottling Works, Inc.* (107 NLRB 233 (1953)).

4. In sum, the nature of Petitioner's conduct dispels all doubt that its objective was to embroil the employees of secondary employers in its primary dispute with

General Electric. Not only the presence of the picket line at the segregated gate, but also incidents such as the appeal of Petitioner's vice-president to the business agent of the union representing employees of one of the contractors (J.A. 92-95), offer compelling support for the view of the Court of Appeals that the Union induced concerted action to shut down the neutrals' operations. Accordingly the lower court's holding that "the objective of the picketing at Gate 3-A as so found by the Board brings this case within the statute's range" is correct.

## CONCLUSION

For the foregoing reasons the petition for a writ of certiorari should be denied.

Respectfully submitted,

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